

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2506 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

LAXMIBEN WD/O BALUBHAI HARIBHAI & ORS

Versus

STATE OF GUJARAT & ANR.

Appearance:

Shri Y.N. Oza, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/04/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No. 1 herein) on 5th April 1988 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India. By its impugned order, respondent No. 1 declared the holding of the predecessor-in-title of the present petitioners to be in excess of the ceiling limit

by 3089 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are the heirs and legal representatives of one Balubhai Haribhai Patel (the deceased for convenience). He filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to the holding of the family within the urban agglomeration of Surat. That form was duly processed by the Competent Authority at Surat (respondent No. 2 herein). After observing necessary formalities under sec. 8 of the Act, by his order passed under sub-section (4) thereof on 29th August 1986 but communicated on 4th September 1986, respondent No. 2 came to the conclusion that the holding of the deceased was in excess of the ceiling limit by 89 square meters and since it was within the margin of 10% of the prescribed ceiling limit, it was not required to be declared excess. Its copy is at Annexure B to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision was thereupon contemplated. A show-cause notice therefore came to be issued on 17th January 1987 calling upon the present petitioners to show cause why the order at Annexure B to this petition should not be revised. The petitioners appear to have filed their reply thereto on 23rd February 1987. After hearing the petitioners by the order passed on 5th April 1988, respondent No. 1 came to the conclusion that the holding of the deceased was in excess of the ceiling limit by 3089 square meters and it was declared surplus. Its copy is at Annexure A to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition.

3. It may be noted that respondent No. 2 found the holding of the deceased to be for and on behalf of the joint family. It transpires therefrom that one property bearing survey No. 381/2/1 admeasuring 6070 square meters situated at Adajan (the land in question) was received by the mother of the deceased from her husband in 1947 and the deceased inherited it on death of his mother some time in 1961. That was certainly prior to coming into force of the Act. It appears that the deceased treated the land in question to be his joint family property. This inference can be drawn from the fact that he filed his declaration in the prescribed form under sec. 6(1) of the Act showing his holding to be that of the family. As transpiring from the order at

Annexure B to this petition, the deceased filed his declaration in the prescribed form on behalf of the family consisting of himself, his wife, two major sons and three minor sons. The author of the impugned order at Annexure A to this petition was not justified in not treating the holding in the hands of the deceased not to be ancestral properties. As indicated hereinabove, according to settled principles of Hindu law, a person can throw his self-acquired property into the joint family hotchpotch. In that case, the self-acquired property loses its character as such and becomes the joint Hindu family property. The very fact that the deceased filed his declaration in the prescribed form on behalf of the family showing the disputed land therein would indicate that he treated it to be the joint family property. In that view of the matter, respondent No. 2 was justified in coming to the conclusion that the properties in the hands of the deceased were joint Hindu family properties. The contrary conclusion reached by the author of the impugned order at Annexure A to this petition cannot therefore be sustained in law.

4. It is an admitted position on record that the holding of the deceased was to the tune of 4589 square meters. On the date of coming into force of the Act, the deceased had two major sons in that family. They were also entitled to their interest in the joint family property. The family was thus entitled to three ceiling units with respect to the family holding. The excess land would therefore be to the tune of 89 square meters. It could not be declared surplus as it was within the margin of 10% of the ceiling limit prescribed for the urban agglomeration in view of relevant circulars issued by the State Government indicated in the concluding part of the order at Annexure B to this petition.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 5th April 1988 under sec. 34 of the Act at Annexure A to this petition is quashed and set aside. The order passed by the Competent Authority at Surat on 29th August 1986 but communicated on 4th September 1986 at Annexure B to this petition is restored. Rule is accordingly made absolute with no order as to costs.
